

No. 9(1)82-6Lab.3595.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Haryana Roadways Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 68 of 1982

between

SHRI SHARU RAM, WORKMAN AND THE RESPONDENT-MANAGEMENT OF
M/S HARYANA ROADWAYS, GURGAON

Shri S.P. Gupta, for the workman.

Shri K. L. Piplani for the respondent.

AWARD

This reference No. 68 of 1982 has been referred to this Court, by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/129/81/16397, dated 26th March, 1982, under section 10(i) (c) of the Industrial Disputes Act, 1947 existing between Shri Sharu Ram, workman and the respondent-management of M/s Haryana Roadways, Gurgaon. The term of the reference was:—

Whether the termination of service of Shri Sharu Ram was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to demand notice and claim statement is that he joined the service of the respondent in the year 1970 as Driver and he was terminated from service on 1st April, 1980 when he was receiving a salary of Rs. 550/-p.m and he was at the age of 51 years. The workman got paralysis attack in the year 1977 and got medically treated. The Chief Medical Officer recommended for light duty or ground duty after the treatment. The respondent without considering the recommendation, terminated the services of the workman which is illegal and the workman is entitled for his reinstatement continuity of service and back wages.

The case of the respondent according to written statement is that the workman was retired from service on 31st March, 1980 after medical examination. He was recommended for the light duty but there was no such light duty available with the respondent as the claimant was selected for the driver to drive the heavy vehicles a show cause notice was issued to the workman before retirement, and after the reply received he was retired in view of the medical opinion he was fit for light duty and the respondent had no alternative but to retire as per rules. So he is not entitled for any relief and the reference be answered in their favour.

On the pleadings of the parties, following issues were framed:—

1. Whether the reference is bad in law because the workman retired and not terminated? If so, to what effect?
2. Whether the termination of service of the workman is proper, justified and in order? If not, to what relief is he entitled?

My findings on the issues are as under—

Issue No. 1.—

The representative of the respondent argued on this issue that as stated by Shri Rajinder Singh Chohan as MW-1, the report of the Chief Medical Officer for recommending light duty is Ex. M-1. The workman got an attack of paralysis in the year 1977 and after the treatment he was given the light duty. The General Manager, Haryana Roadways, Gurgaon, recommended this case and issue a show cause notice dated 29th October, 1979 which is Ex. M-2. The claimant replied the same,—vide Ex. M-3 dated 17th November, 1979. After considering the show cause notice and the reply the general manager issue an order Ex. M-4 for his premature retirement on the medical grounds. So the order are not for termination and it is for the premature retirement which the competent authority can consider and can order. It is valid order which cannot be a dispute under the reference which is termed as termination of service of the workman. The reference is bad because the term of reference is not genuine according to the facts.

The Representative of the workman argued on this issue that the workman got an paralysis attack in the year 1977 as he has stated as WW-1. After his treatment the respondent gave a light duty as per order dated 8th September, 1978 on the recommendation of the Chief Medical Officer, Gurgaon. The Chief Medical Officer Gurgaon also issued a letter dated 26th October, 1978 Ex.W-4 to fit the claimant for the light duty. The respondent posted the claimant as Stand Incharge Dundahera,—vide Ex. W-5 dated 8th November, 1978. An other letter from the Chief Medical Officer Ex. W-8 was also issued on 11th July, 1979 where the Chief Medical Officer, recommended for the light vehicle or ground duty. The ESI also recommended for the light duty,—vide their letter dated 28th August, 1978 which is Ex.W-10. He further argued, that it is not a premature retirement of the workman but a termination of services because the workman has called the record of the respondent which was produced by Shri Rajinder Singh, Chowhan as WW-3 that three other such persons namely S/Shri Surjeet Singh, Ram Chander and Jagdev Singh, who were also recommended by the C.M.O. for light duty and they are working with the respondent. So the order of retirement of the claimant is not a legal order in the light of the recommendation of the C.M.O. Gurgaon. According to the recommendation of the C.M.O. Gurgaon he should have been given the light duty as provided to other workman named by the Estt. Clerk of the respondent who was summoned by the workman as his witness as WW-3. The workman has produced one retired driver who also met with same accident and he worked upto the age of 55 years on light duty. Though it is not the provision in the rules but the respondent accommodated their employees on light duty on humanitarian grounds and it is discrimination with the workman to remove the workman on the ground of premature retirement. They should have at least kept the workman in the service upto the age of 55 years which is prescribed date for retirement. So it is not a case of retirement but a termination on the whim of Haryana Roadways Officer.

After hearing the argument of both the parties. and going through the file, I am of the view that the respondent should not have prematurely retire the workman in the light of the recommendation from the Chief Medical Officer, Gurgaon. The respondent has produced Ex. M-1 dated 19th July, 1979 a letter from the Chief Medical Officer, Gurgaon in respect of this workman. The respondent referred the claimant for medical examination on 29th June, 1979 and on that recommendation the Chief Medical Officer medically examined the claimant and recommended for light duty to the claimant. In the light of the recommendation he should have given the light duty otherwise what was the sense of getting medically examination of the workman. when he was medically examined and the Medical Officer recommended for the light duty. The respondent should have acted in accordance with the recommendation as in the case of other workman who are admittedly working on the light duty after recommendation from the Chief Medical Officer, Gurgaon. So it is not a retirement but a termination of the workman which is illegal. So the issue is decided in favour of the workman and against the respondent.

Issue No. 2.—After deciding the issue No.1 in favour of the workman there is nothing remains to discuss after this issue. The workman was previously deputed on light duty for three years and after three years of service on light duty there was no reason of premature retirement of the workman without any fault. There is no fault shown before me about the workman. When other such persons are working on the recommendation of the Chief Medical Officer, Gurgaon then he should have also been given opportunity to serve upto to the age of 55 years. The orders shows the discrimination between the same category of workman. which is not legal. The respondent could not rebutt the claims of the workman and the evidence of the workman. The workman has proved on the file that still three or four persons of his categories recommended by the Chief Medical Officer. are working on the light duty and he was terminated. So the orders of the respondent is not legal and the issue is decided against the respondent and in favour of the workman. The workman was terminated on 1st April, 1980 while he put his demand notice on 21st October, 1981 after a lapse of 1½ years. The lapse is on the part of the workman so he is not entitled for any back wages. He is entitled for reinstatement with continuity of service.

This be read in answer to this reference.

Dated 13th April, 1983.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 718, dated 13th April, 1983.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

ASHOK PAHWA,
Commissioner and Secretary to Government, Haryana,
Labour and Employment Department.